

Sumter City-County Board of Appeals

January 13, 2010

BOA-09-27, 1313 Peach Orchard Rd (County)

I. THE REQUEST

Applicant: Christine Martin

Status of the Applicant: Property Lessee/Business Owner

Request: Special Exception approval for an Adult Novelty Store, under SIC Code 7299.

Location: 1313 Peach Orchard Rd

Present Use/Zoning: Vacant retail space/General Commercial (GC)

Tax Map Reference: 132-00-02-015

II. BACKGROUND

The applicant, Christine Martin, is requesting approval to open an adult novelty/lingerie store, at 1313 Peach Orchard Rd (Hwy. 441) located in Sumter County. Based on the submitted application, it is the applicant's intent to open a retail store that sells, "adult lingerie, candles, massage oils and items of a personal and intimate nature." Based on the definition of adult uses as listed in Article 10 of the County Zoning Ordinance, the applicant's proposed business is classified as an adult use and must be reviewed and approved as a Special Exception use.

(Excerpts from pages 255-257, Sumter County – Zoning & Development Standards Ordinance)

***Adult Uses:** Adult uses include any establishment or uses which sells, displays or exhibits materials, including books, magazines, movies, tapes, photographs, etc., which appeals to prurient interests, containing patently offensive depictions of sexual conduct, and having no serious literary, artistic, political or scientific value. More specifically, such uses shall include the following:*

2. *Adult Bookstore or Adult Video Store: A commercial establishment which as one of its principal business purposes, offers for sale or rent (or for form of consideration) any one or more of the following.*

b. Instruments, devices or paraphernalia that are designed for use in connection with specific sexual activities...

9. *Specified Anatomical Areas: Specified Anatomical Areas means human genitals, pubic region, buttock and female breasts below the point immediately above the top of the areola and male human genitals in a discernable turgid state, even if completely and opaquely covered.*

Parcel Characteristics:

The subject property is located in M&M Plaza. M&M Plaza is comprised of two separate parcels and two separate buildings under common ownership. Currently the strip center has two tenants, Mr. Teriyaki in the northernmost tenant space, and Sambinos Italian Restaurant in the southernmost tenant space. The remaining tenant spaces are currently vacant. As shown in the photograph below, the applicant is proposing to locate in one of the vacant tenant spaces. The proposed establishment would occupy an approximate 1200 sf. space somewhere in the central portion of the building indicated by the red square.



Parking for the M&M Plaza is shared between the two structures and is located on both parcels. The site meets all current parking lot development standards and landscaping standards as specified in the Sumter County – Zoning & Development Standards Ordinance. The building the applicant plans to lease a portion of, has a total of 52 parking spaces in the front and rear, including two (2) handicapped spaces. The building next door contains an additional 18 paved parking spaces including one (1) handicapped space. In addition, there is an employee parking area to the rear of that building that is unpaved with spaces to accommodate approximately nine (9) vehicles.



The parking lot has landscaping, curbing & guttering, and is adjacent to the stormwater management system for the site.



There are 23 rear and 29 front parking spaces for this building. The adjacent building with conjoined parking in the front has an unpaved parking area in the rear that is visible in the center of the left-hand photo.

Land Use & Zoning Compatibility

The subject property is a 1.96 acre parcel that is located on a major commercial corridor in Sumter County. The adjacent property to the south is in the same ownership as the property the applicant is leasing for the proposed business and contains a carpeting business. The two properties have shared parking lots and are known as “M&M Plaza.”

According to the Official Zoning Map, both properties are zoned as General Commercial (GC). The purpose of the GC zoning district is to accommodate the broadest range of commercial uses, determined principally by market condition, while protecting the environment from potentially objectionable uses. In addition, the County’s 2030 Land Use Plan shows the subject parcel being designated as a Priority Commercial Corridor, a priority investment area within the Suburban Development policy area. A major theme of the 2030 Plan is to encourage development in new locations while simultaneously bolstering sagging, under-utilized corridors. Whereas Priority Commercial areas represent more likely newer, growing areas, the Priority Commercial Corridors focus on existing corridors across our community. Sumter corridors have been host to a diversity of uses from large, destination retail uses to more base industrial outdoor storage uses. Many formerly prosperous commercial corridors have struggled in recent years. Many corridors are trending towards higher levels of vacancy, or marginalization of retail uses. A new direction is necessary to reinvigorate these areas. Priority Corridor locations are designated for protection against undesirable uses such as industrial, automotive repair, or uses primarily engage in outdoor storage. Priority Corridors encourage both destination retail commercial uses and neighborhood commercial uses as appropriate. Design, layout, impact on adjacent properties, landscaping, and architecture all play a vital role in determining context viability.

The proposed business location is within a recently developed strip center which adheres to all current zoning regulations pertaining to off-street parking lot development, landscaping and other design criteria. As such, specific criteria set forth under the Conditional Use section, 5.b.1.a through 5.b.1.f are, in Staff’s opinion, met by the existing site conditions.

Special Exception Review

Under GC district regulations, adult novelty stores, classified as adult uses (SIC Code 7299) are considered a Special Exception which requires the review and approval of the Sumter Board of Appeals. In particular, special exceptions for adult uses are to be evaluated in accordance with

Article 1, Section 1.h.4.c; Article 3, Section 3.i.4.f; and in accordance with Article 5, Section 5.b.3.h of the Sumter County Zoning & Development Standards Ordinance.

Article 5 Section 5.b.3.h Adult Uses (SIC Code 7299):

1. Purpose and Intent:

It is the purpose of this Article to regulate sexually oriented businesses to promote the health, safety, morals, and general welfare of the citizens of the county and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within Sumter County. The provisions of this Article have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent or effect of this Article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors or sexually oriented entertainment to their intended market. Neither is it the intent or effect of this Article to condone or legitimize the distribution of obscene material.

2. *The referenced use shall not be located within one thousand feet (1,000 ft.) of a residential use, church or religious institution, public or private schools and/or educational facilities; public parks and recreational facilities, and any other sexually oriented business.*

The following can be determined based on 5.b.3.h:

- Based on a site visit and 1000 ft. buffer map generated using the Sumter County GIS, the location meets the 1000 ft. separation requirement from churches or religious institutions, public or private schools and/or educational facilities; public parks and recreational facilities, and any other sexually oriented business. However, the proposed location of the adult use does not meet the Ordinance separation requirement of 1000 ft. from a residential use.



The 1000 ft. Structure Buffer map shown below uses a 2007 aerial photograph of the subject property and adjacent properties. There are +/-37 residential dwellings within 1000 ft.; the closest residential dwelling is +/-660 ft. to the west of

the proposed location.

Article 1, Section 1.h.4.c Special Exceptions:

1. *Special exceptions are subject to the terms and conditions for the use set forth for such uses in the Zoning Ordinance.*
 - Staff finds that the proposed Special Exception request does not meet the 1000 ft. separation requirement from residential uses. Based on measurements obtained using the Sumter County GIS, the closest residential structure is +/- 660 ft. from the proposed location. Therefore, the proposed location does not comply with the separation requirements as set out in Section 5.b.3.h.2 of the Ordinance.
2. *Permits for Special Exceptions shall be evaluated by the Board of Zoning Appeals on the basis of the following criteria:*
 - a. *That the Special Exception complies with all applicable development standards contained elsewhere in this Ordinance, including landscaping and bufferyards, off-street parking, and dimensional requirements;*
 - The property where the proposed business would be located has been developed in accordance with all applicable site development requirements to include paved off-street parking with concrete curb and gutter, landscaping, and stormwater management. Also, there is sufficient parking on site to accommodate the existing businesses as well as the addition of the proposed business.
 - b. *That the special exception will be in substantial harmony with the area in which it is located;*
 - As previously stated, the purpose of the GC zoning district is to accommodate the broadest range of commercial uses, determined principally by market condition, while protecting the environment from potentially objectionable uses. This section of Peach Orchard Rd (Hwy. 441) is dominated by retail/commercial uses and commercial zoning. The existing pattern of development to the north and south of the property is that of General Commercial uses which include retail and service industries including restaurants, drinking establishments, and a blending of small independent and national retailers. The proposed use is a small business retail use, although geared towards a specific clientele; small business retail development is consistent with the established pattern of development on this portion of Peach Orchard Rd.

While special exception approval for an adult novelty store may have no negative impacts on surrounding commercial properties, the presence of such an establishment may impact the adjacent residential uses negatively. Special exception separation criteria are established within the Zoning Ordinance to

protect a variety of uses permitted by right from potentially objectionable uses. As such, adult uses have been classified by the Sumter Community as requiring special exceptions review in order to evaluate whether a use is in harmony with the surrounding area and to review whether a proposed site is an adequate distance from selected established uses. With this in mind, although this particular location may meet all other established ordinance criteria related to site development, etc. it is not in substantial harmony with the area based on not meeting the 1000 ft. separation requirement from adjacent residential uses.

c. That the special exception will not discourage or negate the use of surrounding property for use(s) permitted by right.

- The purpose of the GC zoning district is to accommodate the broadest range of commercial uses, determined principally by market condition, while protecting the environment from potentially objectionable uses. The presence of an adult use may discourage or negate the use of surrounding properties that are permitted by right.

III. STAFF RECOMMENDATION

Staff recommends denial of BOA-09-27 based on the following conclusions:

- The request does not meet the minimum 1000 ft. separation requirement from residential uses;
- The proposed use is not in substantial harmony with the area.

IV. DRAFT MOTIONS for BOA-09-27

- A. I move that the Sumter Board of Appeals deny BOA-09-27, subject to the findings of fact and conclusions contained in the draft order dated January 13, 2010 attached as Exhibit 1.
- B. I move that the Sumter Board of Appeals approve BOA-09-27 on the following findings of fact and conclusions:
- C. I move that the Sumter Board of Appeals enter an alternative motion for BOA-09-27.

V. ZONING BOARD OF APPEALS – JANUARY 13, 2010

The Sumter City-County Zoning Board of Appeals at its meeting on January 13, 2010, voted to deny BOA-09-27, subject to the findings of fact and conclusions contained in the draft order, dated January 13, 2010.

Exhibit 1

Order on Special Exception Application

Sumter Board of Appeals

BOA-09-27, 1313 Peach Orchard Rd, Sumter, SC.
January 13, 2010

Date Filed: January 13, 2010

Permit Case No. BOA-09-27

The Board of Zoning Appeals held a public hearing on Wednesday, January 13, 2010 to consider the request of Christine Martin, 6700 Gulledge Court, Wedgefield, SC 29168 for a special exception which may be permitted by the Board pursuant to Sections 1.h.4.c, 3.i.4.f, and 5.b.3.h of the Sumter County Zoning & Development Standards Ordinance as set forth on Form 4 for the property described on Form 1 to be used for: Adult Use (SIC Code 7299).

After the consideration of the evidence and arguments presented, the Board makes the following findings of fact and conclusions.

1. The Board concludes that the standards in Sections 5.b.3.h of the Sumter County Zoning & Development Standards Ordinance which are applicable to the proposed special exception of the Zoning Ordinance ☐ **have** - ☒ **have not** been met based on the following findings of fact:
 - a. The Board finds the location of the proposed adult use does not meet the Ordinance separation requirement of 1000 ft. from a residential use.



- b. Based on a measurement obtained from the above 2007 aerial photograph and a physical site inspection conducted by the Sumter Planning Department, the Board finds the proposed use is within 1000 ft. of +/-37 residential structures.

2. The Board concludes that the special exception ☐ **does** - ☒ **does not** comply with all applicable development standards contained elsewhere in Sumter County Zoning Ordinance, including landscaping and bufferyards, off-street parking, and dimensional requirements based on the following findings of fact:
 - a. The property where the proposed business would be located has been developed in accordance with all applicable site development requirements to include paved off-street parking with concrete curb and gutter, landscaping, and stormwater management. Also, there is sufficient parking on site to accommodate the existing businesses as well as the addition of the proposed business.
 - b. The proposed Special Exception request does not meet the 1000 ft. separation requirement from residential uses. Based on measurements obtained using the Sumter County GIS, the closest residential structure is +/-660 ft. from the proposed location. Therefore, the proposed location does not comply with the separation requirements as set out in Section 5.b.3.h.2 of the Ordinance.
3. The Board concludes that the proposed special exception ☐ **will** - ☒ **will not** be in substantial harmony with the area in which it is located based on the following findings of fact:
 - a. The request does not meet the minimum 1000 ft. separation requirement from residential uses;
 - b. While special exception approval for an adult novelty store may have no negative impacts on surrounding commercial properties; the presence of such an establishment may impact the adjacent residential uses negatively. Special exception separation criteria are established within the Zoning Ordinance to protect a variety of uses permitted by right from potentially objectionable uses. As such, adult uses have been classified by the Sumter Community as requiring special exceptions review in order to evaluate whether a use is in harmony with the surrounding area and to review whether a proposed site is an adequate distance from selected established uses. With this in mind, although this particular location may meet all other established ordinance criteria related to site development, etc. it is not in substantial harmony with the area based on not meeting the 1000 ft. separation requirement from adjacent residential uses.
4. The Board concludes the special exception ☒ **will** - ☐ **will not** discourage or negate the use of surrounding property for uses(s) permitted by right based on the following findings of fact:
 - a. The purpose of the GC zoning district is to accommodate the broadest range of commercial uses, determined principally by market condition, while protecting the environment from potentially objectionable uses. The presence of an adult use may discourage or negate the use of surrounding properties that are permitted by right.

THE BOARD, THEREFORE, ORDERS that the special exception is ☒ **DENIED** –
☐ **GRANTED**.

Approved by the Board by majority vote.

Date issued: _____

Chairman

Date mailed to parties in interest: _____

Secretary

**Notice of appeal to Circuit Court must be filed within 30 days after date this Order was
mailed.**
